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IN THE

Supreme Court of the United States

October Term, 1976

No. 77-20

SALVATORE S. RINIOLO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Preliminary Statement

Petitioner is a married man and the father of four children who prior to his conviction had never been convicted of a crime. At sentencing the trial Judge himself stated that the sentence report prepared by the Probation Department stated that the Petitioner had "been a good father to your own children and the daughter of the co-defendant".

Petitioner stood trial on four substantive counts and one count of conspiring to transport women in interstate commerce for the purpose of prostitution. The trial Judge dismissed one of the substantive counts before the case went to the jury and said about the remaining counts ". . . I will let them go to the jury, but I think they are *awfully thin* . . ." (309, emphasis applied).

Petitioner was acquitted of the remaining substantive counts and was convicted only of the conspiracy count. The trial Judge, after noting that the Petitioner had had no prior criminal conviction and had been a good father, sentenced the Petitioner to two and one-half years in prison. The Court commented about this case which had been prosecuted by the Organized Crime Task Force:

> "and here there is this tremendous income, and where did it go? That suggests an air of mystery and suggests that an organization exists with respect to this business . . ." (26)

There was, however, no proof whatsoever of organized crime in this case and at best there was speculation on the Judge's part to support the trial Judge's theory about organized crime.

Further the only proof in the case that established the Federal element to secure the crucial search warrant was admitted to be a lie by the key government informer when she took the witness stand and was put under oath.

IN THE

Supreme Court of the United States

October Term, 1976

SALVATORE S. RINIOLO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Petitioner, Salvatore S. Riniolo, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in May, 1977.

Opinions Below

The opinion of the Court of Appeals is as yet, unreported. It is printed in Appendix A.

The opinion of the District Court in denying the suppression motion has not been reported. It is printed in Appendix B.

Jurisdiction

Following a jury trial, Petitioner was found guilty in the United States District Court for the Western District of New

York (Brieant J sitting by designation) of conspiring to transport women in interstate commerce for the purpose of prostitution in violation of 18 USC 371.

Petitioner appealed to the United States Court of Appeals for the Second Circuit and his conviction was affirmed.

Petition for a writ of *certiorari* is filed within sixty days of the decision of the Second Circuit, an extension of time having been granted by Mr. Justice Marshall in an Order dated May 25, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional Provision Involved

AMENDMENT IV

Statute Involved

18 U.S.C. 371

Questions Presented

1. Whether Petitioner's conviction can be constitutionally sustained where the crucial element of Federal jurisdiction in the Affidavit in support of the search warrant was based on admittedly perjured testimony, and where no attempt whatsoever was made to corroborate the truthfulness of the statement.

2. Whether the trial court's comments concerning "organized crime" at the time of the sentencing, despite the fact that there was not even a hint of organized crime, requires that this case be remanded to a different Judge for resentencing.

Statement of Facts

The Petitioner, who has no prior criminal record who has admittedly "been a good father to your own children and to the daughter of the co-defendant" (23) (refers to pages of the sentencing transcript dated 10/28/76) was convicted for conspiring to transport women in interstate commerce for the purpose of prostitution, after having been acquitted of the four substantive counts in the indictment. He was sentenced to a term of imprisonment of two and one-half years.

This case originated when a search warrant was issued giving agents of the Federal Bureau of Investigation the right to search two residences where they believed that the Petitioner was living. In order to establish the Federal element—the interstate aspect of the crime—the Magistrate who issued the warrant relied on a triple hearsay statement of a prostitute who had allegedly stated that Linda Ferguson, a madam of a house of ill repute in Buffalo, New York, had contacted her by telephone in Boston, Massachusetts and told her to take a bus to Buffalo for the purpose of engaging in prostitution. The information as received by the Magistrate was that the prostitute who was believed to be "Joyce Williams" (but who also used the name of Darlene Bagetta) told a Buffalo Police officer, who told an FBI agent, who told the Magistrate in an affidavit that "Joyce Williams" or "Darlene Bagetta" had stated that Linda Ferguson had telephoned her in Boston, Massachusetts and asked her to come to Buffalo to engage in prostitution. There was no corroboration of this triple hearsay statement of a prostitute whose name could not even be verified.

At trial, however, under oath, Joyce Williams testified that the arrangements for her to come to Buffalo to work as a

prostitute were made through her pimp in Albany, New York, and that consequently, the statement used in her affidavit to secure the search warrant was admitted to be perjury (trial transcript p. 145).

Despite the fact that the police officer, Detective Sergeant Dayka testified that prostitutes are people who do have no qualms about telling the truth and specifically "do give different names and different addresses" as a style of their life, the search warrant was upheld at a suppression hearing.

At the trial there was absolutely no evidence to show that the defendant had ever crossed state lines to transport any woman for the purpose of prostitution, that he had ever crossed a state line in an attempt to induce someone to engage in prostitution, that he had ever made a telephone call out of state (or for that matter in state) in order to lure anyone into prostitution. Further, no one had ever called him from out of state in an attempt to secure his assistance to have a woman engage in prostitution.

It is undisputed that all the arrangements of the business, of getting the girls in, of setting up house rules, of splitting the money with the girls, and of running the house were handled by Linda Ferguson. Linda called Betty Grand (another madam) at times to obtain girls (56-59). She called Flora Majusick several times to get her to work for her (72-77). She arranged with Raymond Pandelli for Rita Burchill (108, 109) and with Harold Nelson for Darlene Bagetta to come to Buffalo (145, 146). She called Ellen Cameo in Boston to work for her (133-135).

Although there was evidence at the trial for the jury to conclude that the Petitioner was *aware* of Linda Ferguson's business, that is a far cry from making the Petitioner a pimp of an interstate organized crime prostitution ring. In fact,

Linda Ferguson testified that she had no pimp and she felt that all pimps were leeches (223) and Rita Burchill testified that Linda Ferguson had told her that she was crazy to work for a pimp, "that I would do better by myself" (130).

Far from being the pimp who headed an interstate organized crime prostitution ring, Salvatore Riniolo is in fact a middle class gentleman of Italian descent who lives together with his wife of 17 years and their children in a rented $185 a month apartment, who was unable to pay for his younger childrens parochial tuition because of financial hardship and who owned a 5 year old car on which there was a loan outstanding (291-292).

REASONS FOR GRANTING THE WRIT

I.

Petitioner's conviction cannot be constitutionally sustained where the only evidence in the affidavit used to support the search warrant which established Federal jurisdiction was based on the uncorroborated triple hearsay statement of a prostitute known to be prone to lying who admitted in court under oath that the statement she gave to secure the search warrant was in fact false.

It is clear that a Federal officer in seeking a search warrant must "present evidence ample to establish probable cause that a *Federal* crime has been committed" (emphasis added) (*U.S. v. Brouillette,* 478 Fed. 2nd 1171 (5th circuit 1973).

In *Brouillette supra,* the Fifth Circuit said

> "to establish the probability of a crime under 18 USC Section 1952 it seems necessary to present facts concerning the state law being violated and *the manner in which interstate commerce is involved in the violation*" Brouillette, *supra* at 1176 (emphasis added).

With respect to the case at bar, the only information submitted to the Magistrate in support of the government's application for warrant authorizing the search at two residences where it was believed that the Petitioner resided was contained in an Affidavit authored by Special Agent Ronald Hawley of the Federal Bureau of Investigation.

Agent Hawley's affidavit which he used to support the Federal jurisdictional element of interstate commerce was based solely on the uncorroborated testimony of an admitted prostitute who told a Buffalo Police officer who told the FBI agent who told the Magistrate that Linda Ferguson had called her long distance in Boston, Massachusetts to ask her to come to work in Buffalo.

The District Court in denying Petitioner's motion to suppress found that the *Brouillette* requirement of showing the existence of a *Federal crime* had been fulfilled by Joyce Williams' statement that Linda had told her to take a bus to Buffalo to engage in prostitution.

What the question boils down to is whether the issuing Magistrate had a "substantial basis for crediting this hearsay" *United States v. Harris,* 403 US 573, 581, *United States v. Karathanos,* 531 Fed 2nd 26, 31 (2D cir 1976).

Although in one sense the prostitute who referred to herself both as Joyce Williams and Darlene Bagetta was an informant admitting her own commission of a crime, this does not elevate her statement to a "substantial basis for crediting the hearsay" *United States v. Harris,* 403 US 573, 581.

This is particularly so because the police officer who had received the original information indicated that prostitutes because of the nature of their business often times tend to lead a life of deceit and often "do give different names and different addresses" than really exist (hearing page 52).

Most significantly in this regard, at trial Joyce Williams a/k/a Darlene Bagetta testified that the arrangements for her to come to Buffalo to work as a prostitute were made through her pimp in *Albany, New York,* Harold Nelson (trial transcript page 145). Furthermore, she stated that she herself was in *Albany* when she first learned that she was going to work for Linda Ferguson (trial transcript page 146). Consequently she admitted under oath that she had lied in giving the statement used to secure the search warrant.

While the Second Circuit Court of Appeals has properly stated the law that—

> "the accuracy of the information provided by the informant is not relevant. Probable cause is established if the facts alleged by the informant, if true, establish illegality *and the affiant has reasonable grounds for believing in the truth of the allegations." U.S. v. Perry,* 385th 2nd 356 at 358. (2nd Circuit 1967, emphasis added).

—it is submitted that particularly in dealing with a person whose whole life is deceit, and who frequently gives "different names and different addresses" (hearing page 52), more than the mere fact that she admitted a crime should be required, to support a federal search warrant.

It would for example have been very simple to have required the government to obtain relevant telephone company records. Such records are a common, corroborative device. See *U.S. v. Lollins,* 522 Fed 2nd 160, 162 (2D cir 1975) and *Mapp v. Warden, New York State Correctional Institutional,* 531 Fed 2nd 1167, 1171.

It is submitted that with the Federal courts already overcrowded and with informant testimony subject to great scrutiny, this court should require strict observance of the

principal that to establish the federal element necessary to secure a warrant, strict observance must be given to the requirement that there must be a "substantial basis" for crediting the hearsay. *U.S. v. Harris*, 403 U.S. 573, 581.

This court should not let that standard of proof sink to the level of accepting at face value whatever a prostitute says to a police officer—again particularly in this case where the prostitute was shown to have actually lied and where the policeman testified at the suppression hearing that he knows that prostitutes do "give different names and different addresses" (hearing page 52).

II.

This case should be remanded to a different judge for sentencing because Judge Brieant allowed his sentencing to be influenced by erroneous matters totally outside the record.

This Court has said that a sentence based upon erroneous information requires that the sentence be set aside. *Townsend v. Burke*, 334 US 736.

Petitioner is a man who has been married and who has lived with his wife for 17 years, who has 4 children and who the Court stated had "been a good father to your own children". (page 23 of sentencing). Many people of substance and standing in the community, according to the record, sent letters of recommendation to the Court on Appellant's behalf.

Aside from the fact this case was prosecuted by the Organized Crime Strike Force and aside from the fact that the defendant is of Italian ancestry there is not one iota of proof in the case to in any way indicate that "organized crime" was involved in this case. Yet the judge at sentencing said

> "and here there is this tremendous income, and where did it go? That suggests an air of mystery and suggests that an organization exists with respect to this business . . ." (26)

The Petitioner stands before this Court as a man without a prior conviction, an admittedly good father and husband, (albeit somewhat errant), a man who worked honestly most of his life to support himself and those who depended upon him and a man whose ties in the community were such that many people wrote the court on his behalf.

Linda Ferguson, who is the admitted madam of the house who had run the business by her own admission for 8 or 9 years received a sentence of probation. Linda Ferguson was the one who admitted receiving the proceeds of the business, and whom the girls had to split their earnings with. There was not one iota of testimony to prove that Petitioner received anything from the business. Not one witness ever saw, or heard of him receiving any of the proceeds.

It is submitted that where the "organized crime" stigma has been identified as one of the major reasons for a particular sentence, it is incumbent upon a court to justify that sentence by relating it to specific facts found either in the trial or the presentence report. In this case it was found in neither place.

In this case the suspicion can only be figments of a judge's imagination.

Conclusion

For all these reasons the Court should grant this Petition for a writ of *Certiorari*.

Respectfully submitted,

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APPENDIX "A"

Opinion of the United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 1112—September Term, 1976
Docket No. 76-1583

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

SALVATORE S. RINIOLO,
Defendant-Appellant.

Before:

Waterman and Gurfein, *Circuit Judges,*
and Blumenfeld, *District Judge.**

Appellant seeks reversal of his conviction in the United States District Court for the Western District of New York after a jury trial, Brieant, *U. S. District Judge,* S.D.N.Y., sitting by designation, convicting appellant of having conspired with a co-defendant to violate federal prostitution laws. He presents three claims for appellate consideration.

* Of the District of Connecticut, sitting by designation.

Appendix "A"—Opinion of the United States Court of Appeals for the Second Circuit.

Philip B. Abramowitz, Buffalo, New York (Gross, Shuman, Laub & David, of counsel) *for Defendant-Appellant.*

Henry Walker, Attorney, Department of Justice, Washington, D.C. (Richard J. Arcara, U.S. Attorney, W.D.N.Y., Dennis P. O'Keefe and William G. Otis, Attorneys, Department of Justice, of counsel), *for Plaintiff-Appellee.*

Per Curiam:

After a trial by jury in the Western District of New York appellant was convicted of having conspired with one Linda Ferguson to violate the federal laws relative to prostitution, 18 U.S.C. §§ 2421, 2422, 2423, and 1952. The 18 U.S.C. § 371 conspiracy count was one of five counts contained in the indictment, the other four alleging the commission of specific substantive offenses by the two defendants. Linda Ferguson pled guilty before trial. Appellant stood trial. At the conclusion of the government's case one of these counts charging substantive offenses was dismissed by the court, and the jury acquitted appellant on the other substantive counts. Upon appeal from his conviction on the conspiracy count appellant claims that the evidence adduced at the trial was insufficient to support his conviction, that an affidavit executed by a government officer in support of two search warrants did not establish probable cause to believe that federal crimes were being committed at the addresses set forth in the warrants, and that the sentence appellant received of 2½ years of imprisonment was excessive.

Appendix "A"—Opinion of the United States Court of Appeals for the Second Circuit.

We affirm the conviction and do not disturb the challenged sentence.

We have carefully examined the transcript of the trial; and, as we must, we consider the evidence in the light most favorable to the government *Glasser* v. *United States*, 315 U.S. 60, 80 (1942), and find that it was sufficient to support appellant's conviction on the conspiracy charge.

As to the claim that the affidavit in support of the motion for the issuance of the two search warrants was inadequate to support their issuance, we concur with Chief Judge Curtin who, after holding a suppression hearing, wrote a lengthy reasoned opinion that there was indeed probable cause to issue the warrants.

Lastly, we point out that the sentence claimed to be excessive was well within the permissible statutory maximum of five years' imprisonment and a $10,000 fine, and we find no impermissible factors which would justify our disturbing the sentence imposed by the trial judge.

APPENDIX "B"

Opinion of the United States District Court for the Western District of New York

UNITED STATES DISTRICT COURT
Western District of New York

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SALVATORE A. ("Sam") RINIOLO,

Defendant.

CR-74-53

The defendant is charged in a five-count indictment with various violations of 18 U.S.C. §§371, 1952, and 2421 *et seq.* The defendant has moved to suppress the fruits of searches at 829 Elmwood Avenue (lower) and Apartment 401, 200 Niagara Street in the City of Buffalo, conducted pursuant to two search warrants issued on the same day as the searches, January 21, 1974, by the United States Magistrate, Edmund Maxwell. The suppression hearing was held before this court on November 3, 1975, and the following constitutes the court's findings of fact and conclusions of law.

Both of the search warrants issued in this case were based on identical affidavits executed by Special Agent Ronald Lee Hawley of the Federal Bureau of Investigation (FBI). The af-

fidavit relies on information obtained from three different informers (hereafter referred to as Sources I, II and III). Agent Hawley was personally familiar with Source I, but not Sources II and III, whose information was relayed to him by Sergeant Dayka of the Buffalo Police Department and Agent Taylor of the FBI.

The defendant argues that the search warrants were invalid because there was not a sufficient showing made for the Magistrate to find probable cause. To answer this argument, the court must analyze the affidavit to determine whether there was sufficient information presented as to the reliability of the three sources, and as to the underlying circumstances set forth by each source. *Aguilar v. Texas*, 378 U.S. 108 (1964); *Spinelli v. United States*, 393 U.S. 410 (1969).

SOURCE I

The affidavit for the search warrants in question provided the following information relative to Source I:

> Source I is known to Special Agent John F. McAuliffe, who is working with Your Affiant in this matter, to be a gainfully employed citizen who has no criminal involvement other than the apparent violation of Section 230.05 (N. Y. P. L.—Patronizing a Prostitute) as described herein. Source I has been a customer of the prostitution operation carried on by Linda Ferguson from her residence, 829 Elmwood Avenue (Lower), Buffalo, for approximately two years. Your Affiant believes Source I to be legally reliable because of his declarations against

> penal interest as described herein, his otherwise respectable position in the community and the fact that Source I has provided information in the past concerning other prostitution operations which have been consistently corroborated by independent investigation conducted by Special Agents of the Federal Bureau of Investigation.
>
> During the second week of October, 1973, Source I, in the presence of Your Affiant and Special Agent John F. McAuliffe, telephoned Linda Ferguson at 829 Elmwood Avenue, Buffalo. Source I, who used a code name, was instructed by Ferguson to wait thirty minutes then go to 200 Niagara Street, Apartment 401, Buffalo, New York.
>
> At the specified time on that date, Source I went to the above-mentioned address and was admitted by the prostitute in residence. Source I had sexual intercourse with the prostitute and paid her forty dollars.
>
> Subsequently, within the past ten days, Source I made similar arrangements with Ferguson and was directed again to the same apartment at 200 Niagara Street. Then Source I had sexual intercourse with a prostitute who identified herself as "Darlene," who said she was from Albany and had previously worked as a prostitute in Boston. Your Affiant believes that this is "Joyce Williams" described below because she had sutures down the center of her forehead as did Williams when arrested on January 18, 1974. Source I paid "Darlene" more than $20 dollars. (RLH EFM].

It is clear from paragraph one above, that there was a sufficient statement made as to the reliability of Source I. The

fact that Source I provided information in the past which was consistently corroborated by independent investigation is controlling. *United States v. Rollins*, 522 F.2d 160, 164 (2d Cir. 1975); *United States v. Sultan*, 463 F.2d 1066 (2d Cir. 1972).

It is also clear from paragraphs two, three and four above, that there were sufficient underlying facts set forth to indicate how Source I came by his information. Both Agents Hawley and McAuliffe were working with Source I when he contacted and patronized a prostitute through Linda Ferguson in October, 1973, and this information was updated by additional first-hand information provided by Source I only 10 days before the search. Such information is clearly a basis for a finding of probable cause.

SOURCE II

Source II is identified in the affidavit as Joyce Williams, also known as "Darlene," with Agent Hawley believed was the same prostitute Source I patronized 10 days before the search. The affidavit states:

> On or about January 18, 1974, at approximately 11:37 PM, Officer Anthony Gawron of the Buffalo Police Department (who has since provided Your Affiant with the information contained herein) arrested a female who identified herself as "Joyce Williams" (W/F/8-15-54) and gave a home address of 75 St. Alphunsus, Boston, Massachusetts. At the time of arrest, this female had sutures running down the center of her forehead. The arrest was predicated upon an offer by the said Joyce

> Williams to engage in sexual intercourse and fellatio with Officer Gawron (who was then and there operating in civilian clothing) for the sum of $25.00. She was charged with Prostitution in violation of Section 230.00 of the Penal Law of the State of New York.
>
> Subsequently, at the station house, Detective Sergeant Raymond Dayka (who is working with Your Affiant on this matter) took the following statement from Joyce Williams, who was completely advised of her Miranda Rights:
>
> Williams identified a photograph of the said Linda Ferguson and stated that she had been contacted by Ferguson in Boston, Massachusetts by telephone and was directed by Ferguson to come to Buffalo, New York by bus for purposes of engaging in prostitution, which Williams did, on or about January 16, 1974. Williams further stated that Ferguson arranged for her (Williams) to stay in Apartment 401 at 200 Niagara Street and to engage in prostitution by appointment at that location. Williams agreed to split the profits on a 50/50 basis with Ferguson. Williams stated that she had worked as a prostitute in both Albany and Boston. Williams further identified a police department photograph of Salvatore Riniolo as having been present with Linda Ferguson during conversation when some of the arrangements were finalized. After Williams had given the statement, which incriminated Riniolo and Ferguson, Williams placed a call by dialing Ferguson's telephone number of 883-9186 (which Your Affiant known/from New York Telephone

> Co. Records [RLH EFM] to be listed to Ferguson at 829 Elmwood Avenue (Lower), Buffalo, New York) and talked to the party on the other end. After that Williams returned and refused to give any further statement. She advised the officers that a lawyer was being obtained for her.

The person who provided information in this statement is a confessed participant in the crime charged. In such a situation, the usual rules of reliability do not apply. As stated by the Second Circuit in *United States v. Miley,* 513 F.2d 1191, 1204 (2d Cir. 1975):

> To require a showing of previous reliability by such a person would, as in the case of a victim or a witness, make his information totally unavailable, despite the peculiar likelihood of its accuracy. Such information is *toto coelo* removed from a "meager report" that "could easily have been obtained from an offhand remark heard at a neighborhood bar", as to which prior history of providing accurate information is required, Spinelli v. United States, . . . (Citations omitted).

Source II admitted to engaging in acts of prostitution in both Albany and Boston. In the affiant's report of the statement made to Sergeant Dayka, Source II identified defendants Ferguson and Riniolo by photograph, stated that she arrived in Buffalo on or about January 16, 1974, and that it was arranged for her to stay at 200 Niagara Street, Apartment 401 and to engage in prostitution there. The officer further indicated that Source II called Linda Ferguson's phone number after her arrest. Her date of arrival in Buffalo and the location of

the premises at which she was to stay are corroborated by the information provided by Source I. The phone number she called was known by the affiant's corroboration to belong to Linda Ferguson. The declaration against interest and the degree of corroboration between the information provided by Sources I and II, as well as the independent corroboration provided by the affiant, are sufficient to establish a basis for crediting the report of Source II. *United States v. Harris,* 403 U.S. 573 (1971); *United States v. Miley, supra.*[1] Finally, the information regarding Ferguson's phone call to Source II, while Source II was still in Massachusetts, provides the federal element of the offenses under investigation. *United States v. Brouillette,* 478 F.2d 1177 (5th Cir. 1973).

---

[1] At the suppression hearing, the Government informed the defense that statements made by Source II subsequent to the execution of the search warrants were in conflict with the earlier statement she gave to Detective Sergeant Dayka. These subsequent statements were not introduced at the hearing nor was Source II called to testify. In *United States v. Sultan,* 463 F.2d 1066, 1070 (2d Cir. 1972), the court dealt with this issue and resolved it by stating: ". . . probable cause is not to be defeated because an informant is later proved to have lied, as long as the affiant accurately represented what was told to him."

The defense called Detective Sergeant Dayka as a witness at the suppression hearing and introduced his written report of his conversation with Source II. Sergeant Dayka stated that his written report was the basis for the information he conveyed to affiant Hawley. Affiant Hawley testified that everything he had put in the affidavit regarding Source II came from his conversation with Detective Sergeant Dayka and/or Dayka's written report of the arrest. While the written police report of the conversation with Source II is not reproduced in the affidavit, the two documents are not inconsistent. There was no showing at the hearing that the affiant made a reckless or intentional misstatement, or that either the affiant or Dayka knew that any of the information was false. The conflicts in Source II's statements, therefore, have no bearing on the finding of probable cause.

The information provided by Source III was related to the affiant by a Special Agent of the FBI. The affidavit states:

> During late 1972, Source III was brought to Buffalo from another state for purposes of engaging in prostitution. Source III was taken to Linda Ferguson and Salvatore Riniolo (whose photographs she identified subsequently), both of whom were then living together at 829 Elmwood Ave., Buffalo. Source III remained in Buffalo approximately one week working as a prostitute for Ferguson and Riniolo. From conversations and first-hand observations during this period, Source III was able to report that Riniolo acts as Linda Ferguson's pimp and is the manager of the Ferguson operation, actually having contact with the prostitute in residence.

This information, standing alone, could not provide a basis for a finding of probable cause because it refers to a period of time more than a year prior to the date of the affidavit. *Schoeneman v. United States*, 317 F.2d 173 (D.C.Cir. 1963). However, this information was corroborated and updated by Sources I and II. Among other things, Source I said that he had been a customer of the Ferguson operation for two years. The address given as the residence of Riniolo and Ferguson by Source III is corroborated by the independent investigation of the FBI by surveillance as late as November, 1973. Moreover, Source III's information provides general background about the criminal activity of the defendants, and this may be considered by the Magistrate as one important element of probable cause. *United States v. Tramunti*, 513 F.2d 1087, 1101, n.19 (2d Cir. 1975), *cert. denied*, 423 U.S. 832 (citing *United States v. Harris, supra*, 403 U.S. at 583).

Source III's reliability is based on the fact that her information was corroborated, as set forth above, that her statements were a declaration against interest, and that she testified to the same facts before a federal grand jury. In the affidavit, she is said to have admitted working as a prostitute for one week late in 1972. This declaration against interest carries its own indicia of credibility sufficient for a finding of probable cause. *Harris, supra,* at 853. The fact that Source III testified under oath before a federal grand jury may not of itself be a basis for credibility but, when her information is corroborated as it has been here, it may at least be considered as an indicia of credibility. *See James v. United States,* 416 F.2d 467, 473 (5th Cir. 1969), *cert. denied,* 397 U.S. 907 (1970). All of the above leads to the conclusion that the Magistrate was correct in finding Source III was reliable.

The defendant argues that even if there was probable cause, the warrants are defective because there was no connection shown between the items sought and the premises to be searched. This argument relies on the fact that none of the sources of information made reference to any personal observation of the items on the premises to be searched. This argument is without merit. Depending on the nature of the crime and the items being sought, the connection may be made on grounds other than personal observation. *United States v. Lucarz,* 430 F.2d 1051, 1055 (9th Cir. 1970). it was entirely reasonable, under the circumstances of this case, for the Magistrate to conclude that the items sought were being utilized to carry out the illegal activity. *United States v. Scherfman,* 442 F.2d 1352, 1355 (2d Cir. 1971), *cert. denied,* 405 U.S. 919. Additionally, the description of the items was particular enough because

> [w]hen circumstances make an exact description of instrumentalities [of a crime], a virtual impossibility, the searching officer can only be expected to describe the generic class of items he is seeking.
> *James, supra,* at 473; *United States v. Auterbridge,* 375 F.Supp. 418, 420 (S.D.N.Y. 1974).

Similarly, the defendant's argument that the warrants failed to adequately describe the premises must be rejected. The descriptions of the premises as Apartment 401, 200 Niagara Street, Buffalo, New York, and 829 Elmwood Avenue (Lower), Buffalo, New York, are sufficiently particular to meet the standard set forth in *United States v. Steele, No. 1,* 267 U.S. 498, 503 (1935), that it is sufficient if the description is such that officers with a search warrant can with reasonable effort ascertain and identify the place intended. Furthermore, a description similar to the ones in this case was upheld in *United States v. Gomes,* 42 F.R.D. 347 (S.D.N.Y. 1967).

Therefore, for all of the aforesaid reasons, the court finds that probable cause for the search existed, and that the items were seized properly. The defendant's motion to suppress is denied.

So ordered.

JOHN T. CURTIN,
John T. Curtin,
United States District Judge.

Dated: August 18, 1976.